

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

PAUL F. HOFER,

Plaintiff,

vs.

CIVIL ACTION

No. 02-2079-GTV

**UNUM LIFE INSURANCE
COMPANY OF AMERICA,**

Defendant.

MEMORANDUM AND ORDER

Plaintiff Paul F. Hofer brought this action against Defendant UNUM Life Insurance Company of America, claiming that Defendant breached two insurance policies. One policy is a disability income policy and the other a business overhead policy. The court previously held that Defendant breached the policies in December 2001 when it denied Plaintiff benefits. Before the court's ruling, Defendant made substantial payments of benefits and premium refunds under the policies. The court awarded Plaintiff prejudgment interest on benefits and premium refunds paid, excluding the benefits and premium refunds paid for October 2001 through October 2002.

The case is now before the court on Plaintiff's motion to alter or amend judgment with regard to prejudgment interest (Doc. 93). Specifically, Plaintiff asks the court to alter its decision that Plaintiff is not entitled to interest on benefits or premium refunds paid for October 2001 through October 2002. For the following reasons, the court denies Plaintiff's motion.

The grounds justifying an alteration or amendment of judgment pursuant to Fed. R. Civ. P.

59(e) are: (1) a change in law; (2) new evidence; and/or (3) the necessity of correcting clear error or preventing manifest injustice. Brumark Corp. v. Samson Res. Corp., 57 F.3d 941, 948 (10th Cir. 1995); Priddy v. Massanari, No. 99-4195-DES, 2001 WL 1155268, at *2 (D. Kan. Sept. 28, 2001). “Appropriate circumstances for a motion to [alter or amend judgment] are where the court has obviously misapprehended a party’s position on the facts or the law, or the court has mistakenly decided issues outside of those the parties presented for determination.” Sithon Maritime Co. v. Holiday Mansion, 177 F.R.D. 504, 505 (D. Kan. 1998) (citations omitted). But a litigant should not use such a motion to rehash previously rejected arguments or to offer new legal theories or facts. Achey v. Linn County Bank, 174 F.R.D. 489, 490 (D. Kan. 1997). “A party’s failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to [alter or amend judgment].” Sithon Maritime Co., 177 F.R.D. at 505 (citation omitted).

Plaintiff alleges: (1) that the court committed clear error, and (2) that denying Plaintiff the disputed prejudgment interest is manifestly unjust. But Plaintiff’s arguments all stem from one theory, a theory that the court has already rejected. As explained above, a litigant should not use a Rule 59(e) motion to rehash previously rejected arguments. Achey, 174 F.R.D. at 490.

Plaintiff contends that the breach of contract in December 2001 triggered an automatic obligation on the part of Defendant to make benefit payments and waive premiums from the date of breach forward. Because Defendant should have paid benefits and waived premiums automatically, Plaintiff rationalizes, Plaintiff is owed prejudgment interest for months beginning in October 2001, even though Plaintiff did not send Defendant financial information for those

months until June 2003, at the earliest. The court acknowledges that Plaintiff gave Defendant the financial information in June 2003 as a part of discovery disclosures, but Plaintiff need not have waited until June to provide the information to Defendant.

The court determines that it was neither clear error nor manifest injustice to deny Plaintiff prejudgment interest for benefits paid and premiums refunded for October 2001 through October 2002. As the court noted in its previous Memorandum and Order, the benefits and premium refunds due to Plaintiff were definitely ascertainable when Defendant had adequate information to determine that Plaintiff was disabled. Because of the unique posture of this case – i.e., the court had before it primarily stipulations of fact, and not actual evidence, the court has no choice but to conclude that Defendant made payments within a reasonable amount of time after receiving the information it needed, information not in the record for the court to review. The court does not find it manifestly unjust to require Plaintiff to continue providing information necessary to determine benefits monthly, even after a denial of benefits, if he wanted to lay the foundation for prejudgment interest.

Plaintiff is concerned that a ruling by the court that Defendant does not owe prejudgment interest on payments withheld until after additional medical examinations were conducted will allow Defendant to manipulate its payments to Plaintiff in the future. The court disagrees that such an outcome is inevitable. The court's rulings in this case are circumstance-specific. Uniquely, the record does not include Plaintiff's medical records. The court is only able to surmise when Defendant had enough information to determine disability based on the fact that Defendant received more information before conceding that Plaintiff was disabled. Consequently, the court

cannot determine whether in December 2001, Defendant had adequate medical information to conclude that Plaintiff's disability was expected to continue indefinitely.

The determination of who is entitled to the time value of the money in this case is not easy; both parties, at one point or another, failed to act as quickly or diligently as they should have. Neither party is without fault. However, the court declines to hold Defendant responsible for making payments before it had the information necessary to determine whether payments were due.

IT IS, THEREFORE, BY THE COURT ORDERED that Plaintiff's motion to alter or amend judgment (Doc. 93) is denied.

Copies or notice of this order shall be transmitted to counsel of record.

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 18th day of May 2004.

/s/ G. T. VanBebber
G. Thomas VanBebber
United States Senior District Judge